

### **REMARKS**

This Application has been carefully reviewed in light of the Office action mailed September 15, 2010 (“Office Action”). Claims 1-3 and 5-23 are pending in the Application and stand rejected. Claims 1, 8, and 23 have been amended without adding new subject matter.<sup>1</sup> Claim 24 is new. Applicants respectfully request reconsideration and favorable action in this case.

### **Interview Summary**

Applicants thank Examiner Wright for his time and courtesies extended to the undersigned during the telephonic interview held on January 13, 2011. Applicants respectfully submit that the interview included a discussion of the rejection of claims 1 and 8 under 35 U.S.C. § 112, ¶ 1, as well as a discussion of the rejection of claim 8 as allegedly obvious over U.S. Patent 6,442,448 to Finley *et al.* (“Finley”) in view of U.S. Patent 6,119,110 to Carapelli (“Carapelli”). No agreement was reached.

### **Claim Rejections – 35 U.S.C. § 112**

Claims 1 and 8 stand rejected under 35 U.S.C. § 112, ¶ 1 for allegedly failing to comply with the written description requirement. Applicants respectfully traverse this rejection and note that the test for compliance with the written description requirement is as follows: “a patent specification must describe the claimed invention in sufficient detail that one skilled in the art can reasonably conclude that the inventor had possession of the claimed invention.” M.P.E.P. § 2163(I) (citing *Moba, B.V. v. Diamond Automation, Inc.*, 325 F.3d 1306, 1319 (Fed. Cir. 2003)). “An applicant shows possession of the claimed invention by describing the claimed invention with all of its limitations using such descriptive means as words, structures, figures, diagrams, and formulas that fully set forth the claimed invention.” M.P.E.P. § 2163(I) (citing *Lockwood v. American Airlines, Inc.*, 107 F.3d 1565, 1572 (Fed. Cir. 1997)). Applicants respectfully met that the present disclosure, as filed, meet this test with respect to claims 1 and 8, as amended.

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<sup>1</sup> Applicants respectfully submit that support for the amendments to the claims and the new claim may be found at, for example, sections [0057]-[0065] of the Application as published. See U.S. Patent Application Publication No. 2006/0266245 (“Application”).

For example, the specification states that:

The control application (21) acquires some information on the local processing unit (3) on which the handling application (4) resides, in order to create a single data bank for recognizing the unit itself. In the case of network configurations, the handling application also univocally identifies the other units present on the network, through all dynamic libraries (6) present in each local unit, so as to able to react to any possible variations in the network configuration.

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In particular, the control application detects that the application has changed and is no longer consistent with the information pre-installed through the software stamp. In this case, the authenticity of the new version of the handling application is checked.<sup>2</sup>

In view of these disclosures at least, Applicants respectfully submit that one of ordinary skill in the art would “reasonably conclude that the inventor had possession of the claimed invention.” Put simply, the cited portions of the Application “[describe] the claimed invention with all of its limitations using such descriptive means as words” even if not every term in the claims, as amended, has *in haec verba* support, which is not required. *See* M.P.E.P. § 2163(I)(B). For at least the foregoing reasons, Applicants respectfully submit that claims 1 and 8, as amended, have more than sufficient written description support. Accordingly, Applicants respectfully request reconsideration and allowance of amended claims 1 and 8 over the pending rejection under § 112, ¶ 1.

Claims 1 and 8 also stand rejected under 35 U.S.C. § 112, ¶ 2 for allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. To the extent this rejection finds the same basis as the rejection under § 112, ¶ 1, Applicants respectfully traverse this rejection for the reasons provided above. In any event, a “claim [that] apprises one of ordinary skill in the art of its scope and, therefore, serves the notice function required by 35 U.S.C. 112, second paragraph, by providing clear warning to others as to what constitutes infringement of the patent[.]” is not indefinite. *See* M.P.E.P. § 2173.02. Indeed, even “a claim term that is not used or defined in the specification is not indefinite if the meaning of the claim term is discernible.” *Id.* Here, there is no suggestion in the Office Action that the meaning of any term in either claim 1 or claim 8 would not be

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<sup>2</sup> Application at [0057]-[0061] (emphasis added)..

discernible by one of ordinary skill in the art in light of the disclosure. Nor does the Office Action assert that one of ordinary skill in the art would not be apprised of the scope of these claims, and therefore, what use, sale, or otherwise, would constitute infringement of these claims. Accordingly, Applicants respectfully submit that a proper rejection of claims 1 and 8 under § 112, ¶ 2 has not been established and respectfully request reconsideration and allowance of these claims.

### **Claim Rejections – 35 U.S.C. § 103**

The claims stand rejected under § 103:

- Claims 1, 3-7, and 12-16 stand rejected as allegedly obvious over *Finley* in view of *Carapelli*;
- Claims 8-11 and 17-22 stand rejected as allegedly obvious over *Carapelli* in view of *Finley*; and
- Claims 2 and 23 stand rejected as allegedly obvious over *Finley* in view of *Carapelli* and in further view of U.S. Patent 6,904,592 to Johnson (“*Johnson*”).

Applicants respectfully traverse this rejection, because the cited references, either alone or in combination, fail to teach or render obvious one or more features of independent claims 1, 8, and 23, as amended. Accordingly, Applicants respectfully submit that these claims and all claims depending therefrom are patentable over the pending § 103 rejection.

As one example, amended claim 8 recites the features of “determining, through the identification of the one or more remote electronic instruments through corresponding certification codes, a variation in at least one handling application associated with one of the instruments in the plurality of electronic instruments; and authenticating, with the control application, the handling application with the variation.” In some example embodiments including such features, these features may provide for increased efficiency and security for a plurality of metrological instruments networked among several fuel dispensers. For instance, such features may allow a single, central control application to authenticate several handling applications through corresponding codes referenced in a dynamic library stored on one fuel dispenser — in contrast, conventional techniques may require separate cooperation and interaction between the control application and all of the networked handling applications.

The *Carapelli-Finley* combination, however, fails to account for at least these features of amended claim 8. Indeed, the Office Action concedes that *Carapelli* does not teach or suggest the step of “identifying, by the handling application through one or more dynamic libraries associated with the handling application, one or more remote electronic instruments in a network of a plurality of electronic instruments including the instrument through corresponding certification codes uniquely associated with each of the one or more remote electronic instruments.” Logically, therefore, *Carapelli* cannot teach or suggest the features of “determining, through the identification of the one or more remote electronic instruments through corresponding certification codes, a variation in at least one handling application ...,” recited in amended claim 8.

*Finley*, however, does not account for this deficiency in *Carapelli*. *Finley*, generally, discusses a network of fuel dispensers including a site manager (SM). *See, e.g., Finley* at 2:65-3:27. *Finley* further discusses that the SM is involved in a testing procedure of various components of a fuel dispenser to verify that “any ROM firmware code itself matches the approved stamped version.” *Id.* at 23:64-67. The SM (*i.e.*, SM 1401) receives upgrades to software on the fuel dispensers and acknowledges when such upgrades have been successfully implemented. *See id.* at 25:27-34. But it has not been shown that the foregoing discussions in *Finley*, or any other portions of this references, teach or suggest that the SM of *Finley* “determin[es], through the identification of the one or more remote electronic instruments through corresponding certification codes, a variation in at least one handling application.” In other words, it has not been shown that any so-called certification codes discussed in *Finley* — for instance, the “approved stamped version” of firmware code — are tied to certain remote electronic instruments such that the SM can determine a variation in an application associated with the instruments through the certification codes. Rather, the above-described discussions in *Finley* merely show that software upgrades may be verified prior to implementation.

For at least the foregoing reasons, Applicants respectfully submit that amended claim 8 is patentable over the *Carapelli-Finley* combination. Applicants further submit that amended claims 1 and 23 are patentable over the *Carapelli-Finley* combinations at least for the reasons

provided above with respect to amended claim 8.<sup>3</sup> Accordingly, Applicants respectfully request reconsideration and allowance of amended claims 1, 8, and 23 and all claims depending therefrom.

#### **New Claim 24**

Applicants have submitted new claim 24 and respectfully submit that this claim is patentable at least for the reasons provided above for amended claim 8, from which it depends. In addition, Applicants respectfully submit that new claim 24 is patentable at least because the references of record fail to teach or render obvious one or more of the following features: “generating a control verification indicating that the variation in the handling application was prepared by the same producer as a previous version of the handling application with the variation; generating a control verification that the variation is subsequent to the previous version of the handling application; and generating a control verification that the variation is consistent with one or more other applications on the electronic instrument,” as recited in new claim 24. Accordingly, Applicants respectfully request consideration and allowance of new claim 24.

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<sup>3</sup> Applicants respectfully submit that *Johnson* fails to account for the deficiencies in *Carapelli* and *Finley*, described above, with respect to amended claim 23.

### **CONCLUSION**

Applicants have made an earnest attempt to place this case in condition for allowance. However, the absence of a reply to a specific rejection, issue, or comment does not signify agreement with or concession of that rejection, issue, or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

Applicants respectfully request consideration of all filed IDSs not previously considered, by initialing and returning each Form PTO-1449.

The fees for a one-month time extension and any excess claim fees are being paid concurrently herewith on the Electronic Filing System (EFS) by way of authorization to Deposit Account No. 06-1050. Please charge any deficiencies, other fees or credit any overpayments to deposit account 06-1050, referencing the attorney docket number shown above.

Respectfully submitted,

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